

Article 5. Reclamation Plan Appeals

§ 3650. Filing of Intent to Appeal.

(a) Any person filing an appeal to the State Mining and Geology Board (the Board) pursuant to Public Resources Code (PRC) Section 2770 shall, within 15 days of exhausting his or her the rights to appeal in accordance with the procedures of the lead agency, file an notice of intent to appeal by submitting the following information: ~~Failure to submit all the required, completed documents to the board within the 15-day filing period will result in an incomplete filing of intent and an automatic rejection of the appeal.~~

(a~~1~~) A map indicating the exact location of the surface mining operation, including township and range.

(b~~2~~) A copy of all documents which together were proposed to serve as the reclamation plan or plan amendment and which were submitted to the lead agency for review and approval pursuant to PRC Section 2770.

(c~~3~~) Written statements with supporting documentation indicating the basis for the appellant's challenge of: the lead agency's action or inaction regarding the submission of a reclamation plan or plan amendment based on the grounds for an appeal provided for under PRC section 2770(e)(1).

~~(1) the lead agency's action to deny approval of the reclamation plan submitted pursuant to PRC 2770; or~~

~~(2) the lead agency's failure to act according to due process; or~~

~~(3) the lead agency's failure to act within a reasonable period of time of submittal of a completed application.~~

(A) failure to act means a lead agency's inaction in processing the reclamation plan through its successive steps as provided for in the lead agency's certified surface mining and reclamation ordinance adopted pursuant to PRC Section 2774, and as provided for in PRC Section 2774(e) 2772.1.

(B) reasonable time means the time period specified in the lead agency's certified surface mining and reclamation ordinance, or that which is mutually agreed upon by the applicant and the lead agency. Where no times are specified in the lead agency's certified mining ordinance, then the interval between successive review steps shall not exceed 60 days.

(d~~b~~) A copy of the notice of intent to appeal shall be sent to the lead agency and the supervisor that the appellant intends to file an appeal to the Board.

(c) Failure to submit all the required, completed documents to the Board within the 15-day filing period will result in an incomplete filing of intent and an automatic rejection of the appeal.

NOTE

Authority cited: Sections 2755, 2759 and 2770, Public Resources Code. Reference: Section 2770(e), Public Resources Code.

§ 3651. Determination of Jurisdiction.

(a) The ~~Chairman~~ of the ~~Mining and Geology~~ Board, or the ~~Chairman's~~ designee (Board Member), shall determine whether the appeal is within the jurisdiction of the Board for purposes of hearing the appeal, and determine whether the appellant's challenge raises substantial issues related to the lead agency's review of reclamation plans or plan amendments submitted for surface mining operations pursuant to the provisions of PRC Section 2770. If the ~~Chairman~~ finds, based upon the criteria stated in (a~~1~~), ~~plus~~ (b~~2~~), and (3) below, that the appeal raises no substantial issues with respect to the lead agency's review of reclamation plans submitted for surface mining operations pursuant to the provisions of PRC Section 2770, ~~he or she the Chair~~ shall refuse to grant a hearing on the appeal. In making these determinations, the ~~Chairman~~ shall consider the following:

(a~~1~~) Whether the appeal raises any issues which can legally be addressed by the Board within the limits of PRC Section 2770(e) ~~and the rules of the Board~~; and

(b~~2~~) Whether the appeal specifically relates to the lead agency's review of reclamation plans or plan amendments submitted for surface mining operations pursuant to the provisions of PRC Section 2770; and

(3) Whether the appellant exhausted all appeal remedies before the lead agency.

NOTE

Authority cited: Sections 2755, 2759 and 2770, Public Resources Code. Reference: Section 2770(e)-(e), Public Resources Code.

§ 3652. Administrative Record.

(a) Once the appellant has been notified that a determination has been made that an appeal is within the jurisdiction of the Board for purposes of hearing the appeal, the appellant shall submit to the board within 30 days of receipt of notification, three certified copies of the lead agency's complete administrative record certified by the lead agency as being a complete record of the following documents regarding the appellant's reclamation plan or plan amendment, which shall include, ~~but not be limited to~~, all of the following information:

(1) All documents which together are proposed to serve as the reclamation plan or plan amendment and which were submitted to the lead agency for review and approval pursuant to PRC Section 2770;

(2) Location and site description maps submitted to the lead agency as part of the reclamation plan or plan amendment application;

(3) Environmental documentation prepared pursuant to the provisions of the California Environmental Quality Act (CEQA), PRC Sections 21000 et seq., including conditions added for mitigation of environmental impacts, if any;

(4) A copy of the lead agency's surface certified mining ~~and reclamation~~ ordinance under which the reclamation plan or plan amendment may have been judged pursuant to PRC Section 2770;

(5) All reports, findings, communications, correspondence, and statements in the file of the lead agency relating to the proposed reclamation plan or plan amendment, including any comments by the supervisor that were submitted pursuant to PRC Section 2772.1; and

(6) Written transcripts of all public hearings related to the lead agency review for approval of the reclamation plan or plan amendment pursuant to PRC Section 2770.

(b) Should the lead agency choose not to complete an environmental review of the project pursuant to the provisions of CEQA, or should the Board deem such review inadequate under the provisions of CEQA, the record will not be considered complete until an adequate CEQA review is completed.

(1) In those instances, in which the Board is the CEQA lead agency, the Board shall be responsible for the preparation of new or supplemental environmental documents.

(2) Pursuant to PRC Section 45045-21089, the project proponent shall bear any costs relating to preparation and completion of any required environmental documents.

(c) Failure of the appellant to request in writing the administrative record from the lead agency within 10 days of receiving notification of the Board's acceptance of the appeal ~~shall be deemed~~ grounds for dismissal of the appeal.

(d) If the appellant is unable to obtain the administrative record from the lead agency within 15 days, the appellant shall ~~so~~ notify the Board in writing and the Board ~~may~~ shall require the lead agency to immediately submit three certified copies of the administrative record to the Board for purposes of hearing the appeal, ~~without undue delay~~.

(e) Failure of the lead agency to produce the administrative record upon request of the Board within 30 days shall be ~~deemed~~ grounds for Board action based on information provided solely by the appellant.

(f) Following production of the administrative record by the lead agency, failure of the appellant to produce the administrative record upon the request of the Board within 10 days ~~may~~ shall be deemed grounds for dismissal of the appeal.

NOTE

Authority cited: Sections 2755, 2759 and 2770, Public Resources Code. Reference: Sections 2770(e)-(e) and 21000 et seq., Public Resources Code; and Section 15000 et seq., California Code of Regulations.

§ 3653. Technical Review for Adequacy of Reclamation Plan.

(a) The Board may consult with the technical staff of the Department of Conservation for determination of the adequacy of reclamation plans or plan amendments prepared for surface mining operations that are appealed to the Board. Preliminary determination of technical adequacy shall be based on, but shall not be limited to, the following:

(1) Substantial compliance with the requirements of PRC Sections 2772, 2772.1, and 2773;

(2) Substantial compliance with the requirements of ~~Board rules and regulations (14 CCR Sections 3500 et seq. and Sections 3700 et seq.)~~ Article 1 (commencing with Section 3500) and Article 9 (commencing with Section 3700) of this subchapter;

(3) Substantial compliance with the reclamation provisions of the lead agency's ~~surface mining and reclamation ordinance~~ as certified by the Board pursuant to the provisions of PRC Section 2774; and

(4) Whether the proposed reclamation plan or plan amendment is technically feasible given the scope of the mining operations.

(b) The determination of whether substantial compliance with PRC Sections 2772, 2772.1, and 2773, Title 14 California Code of Regulations (CCR) Sections 3500 et seq. and Sections 3700 et seq., and the Board-certified lead agency surface mining and reclamation ordinance have been met shall be based on whether all elements of these provisions that are necessary to ensure viable, planned reclamation of a particular site are included and are technically feasible so as to satisfy the objectives of the Surface Mining and Reclamation Act of 1975 (SMARA). For example, a description of revegetation efforts might not be necessary for a pit to be used as a landfill, just as a description of final slope angles may not be necessary for a gravel bar skimming operation. In other sites, however, such information may be critical. In all cases, a site visit by the technical staff of the Department of Conservation shall be made before substantial compliance is determined.

NOTE

Authority cited: Sections 2755, 2759 and 2770, Public Resources Code. Reference: Sections 2770(e)-(e) and 2774, Public Resources Code.

§ 3654. Hearing Procedures - Scheduling.

The Board shall schedule and hold a public hearing on an appeal no later than 45 days from the filing of the complete administrative record, or at such time as may be mutually agreed upon by the Board and the appellant. The hearing may be scheduled as part of a regular business meeting of the Board or may be conducted by a committee of the Board. The Board shall endeavor to schedule such public hearings in the jurisdiction from which the appeal originated; but may otherwise schedule such appeals to be heard in Sacramento.

NOTE

Authority cited: Sections 2755, 2759 and 2770, Public Resources Code. Reference: Sections 2770(e)-(e), Public Resources Code.

§ 3655. Hearing Procedures - Authority for Delegation.

The Board may delegate conduct of the hearing to a committee of at least ~~two~~ members of the Board to be appointed for that hearing by the ~~Chairman of the Board~~. The ~~Chairman of the Board~~ or the ~~Chairman's~~ designee (Board Member) shall conduct the hearing; the recommendations of the committee shall be presented to a quorum of the Board at a regular business meeting for a decision of the full Board consistent with the procedures set forth in Section 3659 of these regulations.

NOTE

Authority cited: Sections 2755, 2759 and 2770, Public Resources Code. Reference: Sections 2770(e)-(e), Public Resources Code.

§ 3656. Hearing Procedures - Notice.

(a) At least 10 days prior to the hearing, the Board shall give public notice as follows:

- (1) Mailing the notice to the lead agency, the supervisor, and to the appellant;
- (2) Mailing the notice to any person who requests notice of the appeal or hearing;
- (3) Mailing the notice to the Board's regular mailing list; and
- (4) Posting of the notice in a place where notices are customarily placed within the jurisdiction of the lead agency.

(b) The notice of hearing shall include the following:

- (1) The name of the appellant;
- (2) Identification of the proposed reclamation plan or plan amendment, a brief description of the location of the surface mining operation for which the reclamation plan or plan amendment was prepared by reference to any commonly known landmarks in the area, and a simple location map indicating the general location of the operation;
- (3) A statement that the appellant has appealed the lead agency's decision to deny approval of the reclamation plan or plan amendment, or that the lead agency is being challenged based on failure to act according to due process, or that the lead agency is being challenged based on failure to act within a reasonable period of time;
- (4) A statement explaining that the Board may approve or deny approval of the reclamation plan or plan amendment, and that if the reclamation plan or plan amendment is denied approval, it shall be returned to the operator who then must revise it and resubmit the revised plan to the lead agency within 30 days of receipt from the Board;
- (5) A statement inviting the appellant, the lead agency, and the public to make statements at the hearing regarding the action (or inaction) of the lead agency; ~~and~~
- (6) A statement inviting the supervisor to provide comments on the adequacy of the proposed reclamation plan or plan amendment whether or not the supervisor had previously provided comments to the lead agency pursuant to PRC Section 2772.1; and
- (~~7~~6) The time, date, and location of the public hearing.

NOTE

Authority cited: Sections 2755, 2759 and 2770, Public Resources Code. Reference: Sections 2770(e)-(e), Public Resources Code.

§ 3657. Hearing Procedures - Record.

The record before the Board at the public hearing shall be the administrative record submitted pursuant to Sections 3650 and 3652 of this article, together with any findings from the technical review pursuant to Section 3653 of this article, and any CEQA documents prepared pursuant to Section 3652 of this article.

NOTE

Authority cited: Sections 2755, 2759 and 2770, Public Resources Code. Reference: Sections 2770(e)-(e) and 2774, Public Resources Code.

§ 3658. Hearing Procedures - Sequence.

(a) The public hearing shall normally proceed in the following manner:

- (1) Identification of the record;
- (2) Statements on behalf of the appellant;
- (3) Statements on behalf of the lead agency;
- (4) Statement on behalf of the supervisor;
- (45) Statements on behalf of the public;
- (56) Rebuttal on behalf of the appellant; and
- (7) Rebuttal on behalf of the lead agency;
- (8) Rebuttal on behalf of the supervisor; and
- (69) Motion to close the public hearing.

(b) Notwithstanding the above, the Chairman or the Chairman's designee (Board Member) for purposes of conducting the hearing may in the exercise of discretion, determine the order of the proceedings.

(c) The Chairman or the Chairman's designee (Board Member) shall have the authority to impose time limits upon statements and presentations and accept written statements in lieu of oral statements. Written statements (12 copies) must be submitted to the Board at least 10~~five~~ days prior to the hearing.

(d) The public hearing shall be recorded.

NOTE

Authority cited: Sections 2755, 2759 and 2770, Public Resources Code. Reference: Sections 2770(e)-(e), Public Resources Code.

§ 3659. Hearing Procedures - Determination.

Following the public hearing, the Board shall determine whether, based on the record before it, the proposed reclamation plan or plan amendment substantially meets the requirements of PRC 2772, 2772.1, and 2773, Article 1 (commencing with Section 3500), Article 9 (commencing with Section 3700), and the certified lead agency surface mining and reclamation ordinance, and the provisions of Section 3654 of this article. Notification of the Board's determination shall be made by certified mail to the appellant, the supervisor, and the lead agency within 15 days following the regular business meeting of the Board at which the decision is made. The Board shall also follow the provisions of PRC Section 2772.1(b)(7)(B) and provide the supervisor with an official copy of the approved reclamation plan or plan amendment. In cases where the reclamation plan or plan amendment is not approved, deficiencies shall be noted in the correspondence notifying the appellant, supervisor, and the lead agency of the Board's decision, and the operator shall be put on notice that deficiencies must be corrected, and a revised reclamation plan or plan amendment filed with the lead agency within 30 days.

NOTE

Authority cited: Sections 2755, 2759 and 2770, Public Resources Code. Reference: Sections 2770(e)-(e), 2772, 2773 and 2774, Public Resources Code.